

BK0906699
KF

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
AT TOLEDO

IN RE:

Kim L. Yahn
Beverly D. Yahn

Debtors

Case No. 09-37812

Chapter 7

Judge Whipple

**MOTION OF U.S. BANK, N.A.
FOR RELIEF FROM STAY AND
ABANDONMENT
(PROPERTY LOCATED AT
612 TIFFIN AVENUE, SANDUSKY, OH
44870)**

U.S. Bank, N.A. (the "Movant") moves this Court, under §§ 361, 362, 363, 554 and other sections of the Bankruptcy Reform Act of 1978, as amended (the "Bankruptcy Code") and under Rules 4001, 6007 and other rules of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") for an Order conditioning, modifying or dissolving the automatic stay imposed by § 362 of the Bankruptcy Code and for abandonment of property under § 554 of the Bankruptcy Code. In support of this Motion, the Movant states:

MEMORANDUM IN SUPPORT

1 The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2). The venue of this case and this Motion is proper

under 28 U.S.C. §§ 1408 and 1409.

2 On September 27, 2006, the debtor, Kim L. Yahn, listed above obtained a loan from The American Eagle Mortgage Corp. in the amount of \$78,764.00. Such loan was evidenced by a promissory note dated September 27, 2006, (the "Note"), a copy of which is attached as Exhibit "A".

3 To secure payment of the Note and performance of the other terms contained in it, the debtors executed a Mortgage dated September 27, 2006 (the "Security Agreement"). The Security Agreement granted a lien on the real and/or personal property (the "Collateral") owned by the debtors, located at 612 Tiffin Avenue, Sandusky, OH 44870 and more fully described in the Security Agreement.

4 The lien created by the Security Agreement was duly perfected by the filing of the Security Agreement in the Office of the Erie County Recorder on September 28, 2006. A copy of the Security Agreement is attached to this motion as Exhibit "B". The lien is the First lien on the Collateral.

5 The Note and Security Agreement were transferred as follows:

The Note was transferred from The American Eagle Mortgage Corp. to U.S. Bank, N.A. as evidenced by the Endorsement on the Note. See Exhibit "A".

The Note was further endorsed in blank. See Exhibit "A".

The Mortgage was transferred from Mortgage Electronic Registration Systems, Inc. as nominee for The American Eagle Mortgage Corp., its successors and assigns to U.S.

Bank, N.A. as evidenced by the assignment recorded on March 16, 2009 as evidenced by the document attached hereto as Exhibit "C".

6 The value of the Collateral is \$76,140.00. This valuation is based on the Erie County

Auditor's Records.

7 As of the date of this Motion, there is currently due and owing on the Note the outstanding balance of \$86,193.10, plus interest accruing thereon at the rate of 6.1% per annum (\$12.92 per day) from February 18, 2010.

8 Other parties who may have an interest in the Collateral are:

Ohio Housing Finance Agency by virtue of a second mortgage upon which the amount due is approximately \$3,463.00.

9 The Movant is entitled to relief from the automatic stay under §§ 362(d)(1) and/or 362(d)(2) for these reasons:

Debtors have failed to provide adequate protection for the lien held by the Movant for the reasons set forth below.

This case is a Chapter 7 wherein debtors are in default for payment on the mortgage loan and there is no equity for the benefit of the estate.

10 Movant has completed the worksheet attached as Exhibit "D".

11 This Motion conforms to the standard form adopted in this District except as follows:

See paragraphs 5 & 9.

WHEREFORE, Movant prays for an Order from the Court granting Movant relief from the automatic stay of §362 of the Bankruptcy Code to permit Movant to proceed under law and for such other and further relief to which the Movant may be entitled.

/s/ Steven H. Patterson
Steven H. Patterson
OH Sup. Ct. Reg. No. 0073452
(513) 241-3100 ext. 3373

LERNER, SAMPSON & ROTHFUSS
Attorneys for Movant
PO Box 5480
Cincinnati, OH 45201-5480
(513) 354-6464 fax
nohbk@lsrlaw.com

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Motion for Relief from Stay and Abandonment of the secured creditor, U.S. Bank, N.A., was electronically transmitted on February 17, 2010 via the Court's CM/ECF system to the following who are listed on the Court's Electronic Mail Notice list:

Robert T Kelsey, Esq.
326 E Market St
Sandusky, OH 44870
kelsey@law@sbcglobal.net

Patti Baumgartner-Novak, Trustee
3015 Navarre Avenue
Suite 203
Oregon, OH 43616
pnovak@buckeye-express.com

Office of the U.S. Trustee
Howard Metzenbaum, U.S. Courthouse
201 Superior Avenue
Cleveland, OH 44114
(Registered address)@usdoj.gov

The undersigned certifies that a copy of the foregoing Motion for Relief from Stay and Abandonment of the secured creditor, U.S. Bank, N.A., was transmitted on February 17, 2010 via regular U.S. mail, postage pre-paid:

Kim L. Yahn
612 Tiffin Ave
Sandusky, OH 44870

Beverly D. Yahn
612 Tiffin Ave
Sandusky, OH 44870

Ohio Housing Finance Agency
57 East Main Street
Columbus, OH 43215

/s/ Steven H. Patterson
Steven H. Patterson
OH Sup. Ct. Reg. No. 0073452
(513) 241-3100 ext. 3373

LERNER, SAMPSON & ROTHFUSS
PO Box 5480
Cincinnati, OH 45201-5480
(513) 354-6464 fax
nohbk@lsrlaw.com